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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,915	09/12/2003	Kevin Damewood	SMCY-P01-103	7338
28120	7590	12/11/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,915

Applicant(s)

DAMEWOOD, KEVIN

Examiner

Sunil Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-20, 23, 24, 27-31, 53 and 56-58 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 5, 6, 8-20, 23, 24, 27-31, 53 and 56-58 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application
6) ☒ Other: See Continuation Sheet 1 attached marked up drawing sheet

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 28-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 28 calls for the mattress to have both a flexible platform and a flexible sheet and wherein the sheet is between the mattress core and the platform and the actuation moves the platform. However, the originally filed disclosure does not provide any such teaching. It appears that the mattress can include either a flexible platform or flexible sheet (110) not both.

3. Claims 2,3,53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 2 calls for "one or more additional sections, each additional section moveable relative to at least the first, second or another of the additional section"; however, the written description does not adequately describe how this additional section relates to the first and second section to enable one skilled in the art to make

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and/or use the invention as claimed. For example, is the additional section along the longitudinal axis of the bed or the transverse axis of the bed?

4.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3,5-6,8-20,23-24,27-31,53,56-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 line 7 calls for the "first drive unit" to move the first section; however, at line 15, the "first drive unit" is allowed to move either the first or second sections. This cannot be the case.

Claim 13 is confusing because it requires for the controller to control either the first or second section; however, claim 13 depends from claim 11 wherein the controller controls only the first drive unit which moves only the first section. Therefore, the controller cannot control the second section.

Claim 27 is similarly rejected as claim 1 above.

Claim 28 line 13, "the first sheet" and "the second sheet" lack clear antecedent basis.

Claim 28 line 14 "the first mechanical drive" lack clear antecedent basis.

Claim 28 is unclear how the "articulation means, screw drive means and linkage means" relate to the "first mechanical drive unit".

Claim 53 is confusing because it is not clear what is meant by "the other of the first and second sheet members". Is it either the first or the second sheet or does the "additional

section" have a "sheet member" as well? And if there were meant to be a "sheet member" corresponding to the "additional section", there is no antecedent basis for such sheet member.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3,5-6,8-11,16-17,23,24,27,53,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewin (US 2649595).

Lewin discloses an adjustable mattress (see Figs. 4-7 and 13-14) comprising a first section and a second section (see attached marked up drawings) overlying a rigid platform (26,26'), the first section and the second section moveable relative to each other (see Figs. 4,5) and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Figs.5 and 13) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (this is considered as the bottom of member (20)) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second

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sections. The first sheet section (see attached marked up drawings) a second sheet section (see attached marked up drawings) and hinged section (see attached marked up section). One or more additional sections (see attached marked up drawings). Second mechanical unit (see Figs. 5 and 6). Mattress cover (22,24). Padding (23). Foundation (this is considered as the box spring, see col. 4 line 55). Spring core (see col. 3 line 5+). Controller (75). Arms (45). Base element (21) and platform (27,40). Frame (see col. 4 line 55+). The other sheet (see attached marked up drawings).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 12-15, Lewin is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

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10. Claims 18, 19, 20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin in view of Reeder et al. '209.

Lewin discloses the invention substantially as claimed. However, Lewin is silent about the first mechanical drive unit comprising a DC motor and worm gear. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Lewin by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Lewin since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

11. Claims 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 56-57, Lewin is silent about the flexible sheet being made out of plywood or plastic. Flexible support made out of plywood or plastic is old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include either a plywood or plastic flexible sheet since such an arrangement would provide some rigidity for support as well as afford some flexibility to facilitate the raising of the head and/or foot portion of the mattress.

Response to Arguments

12. Applicant's arguments filed 9/29/06 have been fully considered but they are not persuasive. Applicant argues that Lewin fails to disclose a first sheet and second sheet connected to by a hinge. The examiner disagrees. As indicated in the marked up drawings, the first sheet is attached to the second sheet by a hinge (see how the mattress moves from Figure 4 to Figure 5 shows there is a hinge connecting a first and second sheet). Applicant argues that member (56) of Lewin is not flexible. The examiner never considered member (56) as the flexible member but instead the bottom of member (20) which is flexible.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh
Primary Examiner
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11/30/06

Filed Dec. 29, 1951

ADJUSTABLE BED MATTRESS

6 Sheets—Sheet 2

